IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

Smt. Manju Rani & Anr. Vs. State of Rajasthan

S.B.CR.MISC.PETITION NO.635/2006
against the order dt.28.7.2005 passed by Judicial Magistrate, No.3, Bikaner in FR Case No.15/2005

DATE OF ORDER :: July 18, 2006

PRESENT

HON'BLE MR.JUSTICE H.R.PANWAR

Mr.Sumer Dan]
Mr.Shyam S.Khatri] for the petitioner.

Mr.Ashok Upadhyaya, P.P. for the State.

Mr. Sandeep Mehta]
Mr. Sanjay Mathur] for complainant.

BY THE COURT:

This criminal misc. petition under section 482 Cr.P.C. is directed against the order dt. 28.7.2005 passed by Judicial Magistrate No.3, Bikaner in FR Case No.15/2005 arising out of FIR No.71/2004, Police Station, Mahila Thana, Bikaner, whereby on an application filed by the investigating officer, returned the file of final report for further investigation in the matter.

Aggrieved by the order impugned, the petitioners have filed the instant misc. Petition.

I have heard learned counsel for the petitioner, Public Prosecutor and the counsel appearing for the complainant.

It is contended by learned counsel for the petitioner that the court below fell in error in returning the file of final report on an application filed by the investigating officer for further investigation. He has relied on decision of this Court in Jeevan Singh vs. State of Rajasthan, **2004 CRI.L.J. 3469.**

Learned Public Prosecutor supported the order impugned and contended that sub-section(8) of section 173 Cr.P.C. empowers the investigating officer to further investigate the matter and, therefore, the order impugned is inconformity with the provisions of law. Learned counsel for the complainant in support of the order impugned have relied on decisions of Hon'ble Supreme Court in Union Public Service Commission vs. S.Papaiah & Ors., **1997 Cr.L.R. (SC) 700,** Hasanbhai Valibhai Qureshi vs. State of Gujarat & Ors., **2004 SCC (Cri)1603** and a decision of Division Bench of this Court in Kan Singh & Ors. vs. State of Rajasthan & Ors. **1997 Cr.L.R. (Raj.) 863.**

In Jeevan Singh vs. State of Rajasthan (supra), this Court held that it is a well settled position of law that even after the conclusion of the investigation pursuant to filing of FIR and submission of report under section 173(2) Cr.P.C., the officer-in-charge of the police station comes across any further information pertaining to incident, he can make further investigation with the leave of the Court and forward further evidence, if any collected, further report or report under section 178(8), Cr.P.C. It was further held that the learned Magistrate committed gross illegality in returning the final report to the SHO, Police Station, Surajpole on his just asking for production before the Superintendent of Police. It is not the rule that once a police report has been forwarded, the matter cannot be further investigated and police can ask for return of the final report. The police can make an appropriate application and seek permission for further investigation, which may include directions with regard to investigation by the higher police authorities. The final report once submitted in the Court cannot be returned on an application submitted by the S.H.O. in a cavalier manner, as has been done in that case.

In Union Public Service Commission vs. S. Papaiah & Ors. (supra), the Hon'ble Supreme Court while considering the scope of sub-section (8) of section 173 Cr.P.C. held that the Magistrate

could, thus in exercise of the powers u/s. 173(8) Cr.P.C. direct the CBI to "further investigate" the case and collect further evidence keeping in view the objections raised by the appellant to the investigation and the new report to be submitted by the Investigating Officer would be governed by sub-sec. (2) to (6) of section 173 Cr.P.C. The Magistrate failed to exercise the jurisdiction vested in him by law and his order dated 4.11.1995 was held not to be sustainable by which the Magistrate dismissed the application filed by CBI seeking return of the final report closer of the case for further investigation.

In Hasanbhai Valibhai Qureshi vs. State of Gujarat & Ors. (supra), the Hon'ble Supreme Court while considering the provisions of sub-section (8) of section 173 Cr.P.C. held that police can conduct further investigation in a proper manner even if the court has taken cognizance In that case, the grievance of the appellant, who had lodged a criminal complaint against the accused-persons was that the investigation in his case was not carried out fairly. According to him, the police had succumbed to the pressure exercised by the local MLA and after a few hours of the registration of the FIR, Sections 395 and 120-B IPC were deleted by the prosecuting agency and because of such deletion the accused persons managed to get bail. The appellant filed a writ petition before the High Court for issuance of appropriate

writ for reinvestigation by an independent agency. The High Court declined to entertain the said writ petition by holding that if further investigation was necessary, the said remedy was available in CrPC. It held that the police was not the ultimate authority which could decide about the applicability of sections. Thus, the High Court directed that appropriate steps could be taken by the complainant along with the prosecuting agency before the trial court. That order came to be challenged before the Hon'ble Supreme Court. It was contended before the Apex Court that the case was fixed for day-to-day hearing and if further investigation would be done, it would prove infructuous and would only delay the process of trial unnecessarily. Hon'ble Supreme Court held that mere fact that there may be further delay in concluding the trial should not stand in the way of further investigation if that would help the court in arriving at the truth and do real and substantial as well as effective justice. Section 173(8) CrPC permits further investigation, and even dehors any direction from the court as such, it is open to the police to conduct proper investigation, even after the court took cognisance of any offence on the strength of a police report earlier submitted. All the more so, if as in this case, the Head of the Police Department also was not satisfied of the propriety or the manner and nature of investigation already conducted. It was further held that when defective investigation comes to light

during course of trial, it may cured by further investigation, if circumstances so permit. It would ordinarily be desirable and all the more so in this case, that the police should inform the court and seek formal permission to make further investigation when fresh facts come to light instead of being silent over the matter keeping in view only the need for an early trial since an effective trial for real or actual offences found during course of proper investigation is as much relevant, desirable and necessary as an expeditious disposal of the matter by the courts.

A Division Bench of this Court in Kan Singh & Ors. Vs. State of Rajasthan & Ors. (supra) held that it is settled law that investigation lies within the sole domain of the executive and Court does not generally come into picture so long investigation remains pending unless there are exceptional circumstances. It was further held that there is no bar under the law not to investigate further even after submitting the police report.

In Sri Bhagwan Samardha Sreepada Vallabha Venkata Vishwanandhan Maharaj vs. State of A.P., **AIR 1999, SC 2332**, the Hon'ble Supreme Court held that there is nothing in section 173(8) to suggest that the Court is obliged to hear the accused before any direction for further investigation is made. Keeping in view the provisions of sub-section (8) of section 173, which in

clear terms deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2).

In the instant case, the police filed the final report and thereafter the investigating officer moved an application for return of the file stating therein that the file has been sought by the Superintendent of Police, Bikaner obviously for further investigation contending that the final report submitted by it be returned to the police for reinvestigation/further investigation to record the statements of witnesses Amrit Kumari and Ritu etc. as also to recover the dowry articles belonging to the complainant. The Magistrate returned the FR file on the said application with a direction to further investigate the matter according to law and submit the report to the court. In my view the direction of the trial court in returning the file of FR for further investigation according to law in any case cannot be said to be erroneous or without jurisdiction, more so, the order

returning the file of final report for further investigation according to law cannot be said to result in serious miscarriage of justice or abuse of process of any court. It is settled law that inherent powers of this Court under section 482 Cr.P.C. are to be exercised sparingly and in exceptional cases where it is brought to the court that the non-interference would result in miscarriage of justice or abuse of process of court. Nothing has been pointed out that by further investigation any miscarriage of justice would be caused. More so, keeping in view the decision of Hon'ble Supreme Court in Sri Bhagwan Samardha Sreepada Vallabha Venkata Vishwanandhan Maharaj vs. State of A.P. (supra), the accused are not required to be heard before any direction for further investigation in the matter is made as the court is not obliged to hear the accused before any direction for further investigation is made. In this view of the matter, I do not find any merit in the criminal misc. Petition and the same is liable to be dismissed.

Consequently, the criminal misc. petition is dismissed. Ad interim stay order is vacated. The stay petition also stands dismissed.

[H.R.PANWAR],J.

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